

GOVERNMENT EMPLOYMENT RELATIONS ACT OF 2005
Ordinance # 05-600-01

Article I. Purpose; Findings

1.01. *Purpose.* The purpose of this ordinance is to identify the employment laws and policies of the Tribe as an employer.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction;
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted on an emergency basis by Tribal Council resolution # 05-0706-305.

a. Resolution # 05-1102-565 - Permanent adoption of Ordinance after Public Comment.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.03. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.05. *Sovereign Immunity.* To the extent necessary to carry out the just cause provisions of section 4.01(a) of this ordinance and application of damages as authorized under Article IV, the Tribal Council hereby authorizes a limited waiver of the sovereign immunity of the Tribe in accordance with Article XI, Section 1 of the Constitution.

Article III. Definitions

3.01. *General.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Human Resource Department* means the office responsible for managing the employment related information of government employees. Where appropriate, Human Resource Department may refer to the physical offices, or a representative of that department assigned to a particular responsibility for example managing employment benefits.

3.03. *Grievance* means a dispute, claim or complaint arising under the terms of this policy and filed by an employee. Grievances are limited to matters of violation, interpretation or unfair applications of this policy. The employee filing a grievance must show how the grievance directly affects him/her.

Article IV. Employment Relations

4.01. *Employment Relations.* Unless specifically stated otherwise, all employees shall be considered to have a just cause employment relationship with the employer as specifically defined and limited within this Ordinance. The doctrine of at-will employment shall not be interpreted as the policy of this Tribe, provided that, the Tribe or the employee may terminate the employment relationship at-will during the probationary period. Provided that, nothing in this Ordinance shall prohibit amendments, revisions or repeal of this Ordinance by the Tribal Council.

a. Tribal government employees shall be considered to have a just cause employment relationship with the Tribe and are authorized to file an appeal of disciplinary actions in accordance with the procedures and limitations prescribed in subsection (b) and in accordance with the Employment

Division of the Tribal Court Ordinance.

b. The rights created in this ordinance shall permit employees to file an appeal in Tribal Court which alleges that the employee is aggrieved only by one or more of the following actions:

1. The employee has been terminated without just cause;
2. The employee has been suspended without just cause;
3. The employee has been demoted without just cause;
4. The employee was terminated, suspended, or demoted as a result of unlawful employment practices under the Fair Employment Practices Code, which shall be brought under the procedures of the Fair Employment Practices Code.

c. The right to appeal a disciplinary action to Tribal Court shall not apply to:

1. A person in a temporary position whose employment is terminated due to lack of work or funding, or at the end of the defined term;
2. A person separated from any department due to curtailment of funds or reduction in staff as authorized in a program budget or budget modification approved by the Tribal Council;
3. A claim that a person has been denied any other term or condition of their employment.

d. All other disciplinary actions may be appealed through the next level of supervisory authority until reaching the director, whose decision shall be issued in writing, and final. As used in this section, director is the employee of the Tribe reporting directly to the Ogema. Excluding those actions listed in subsection (b), no further appeal of a disciplinary action shall be authorized under this section.

e. Tribally chartered enterprises and businesses within the jurisdiction of the Tribe shall not be governed by this ordinance.

4.02. *Just cause - Applied.* Just cause, as used in this Ordinance, means a termination undertaken as the result of actions or omissions of the employee which violate employment rules and responsibilities of the employer, violate a federal grant restriction requirement, or failure to carry out, in workmanlike manner, the responsibilities of the position for which the individual is employed. Employment rules and responsibilities are those requirements of the department and/or program which are specifically identified to the employee by the supervisor, listed in personnel manuals, as required under Tribal law, or as required under applicable federal law. Employees, as part of their working environment, shall be presumed to be aware of and know the laws and regulations of the Tribe, to be aware of and know the applicable federal laws and regulations regarding department and/or program activities, and to be aware of and know the personnel laws, regulations and polices of the Tribe without requiring documentation of having been presented copies of these documents.

4.03. *Progressive Discipline.*

a. The Tribal government shall be required to identify and maintain progressive disciplinary policies and procedures. Progressive discipline identifies that an employee can improve their work product and work habits through education and knowledge, and that identification and correction of unwanted actions or inactions can result in improvement of the employee job performance. Provided that, the Tribal government may identify actions that may result in immediate suspension and/or termination of the employee without resort to progressive disciplinary action. Tribal government policies authorizing exceptions to the progressive disciplinary processes must be in writing and approved by the Tribal Council.

b. Notwithstanding anything to the contrary in either this ordinance or the Employment Division of the Tribal Court Ordinance, the disciplinary policies of the Tribal government, shall, prior to taking any disciplinary actions described in paragraphs (b)(1) - (4) of section 4.01, provide the employee with a written notice of the charges against them, a written explanation of the employer's evidence constituting just cause, and an opportunity to present their side of the action.

c. After any pre-disciplinary action proceedings conducted under subsection (b), the Tribal government shall provide the employee with a written decision and notify the employee of the right to appeal the disciplinary action in accordance with section 4.04 of this Ordinance and the Employment Division of the Tribal Court Ordinance.

4.04. *Grievance Matter; Orders of Employment Division.* The Employment Division may order the following relief in grievance matters.

a. *Uphold.* The Employment Division may uphold the disciplinary action in total.

b. *Remand.* The Employment Division may remand the disciplinary action to the Ogema, Tribal

Council, Tribal Court, as appropriate, for corrective action. The decision of the Employment Division shall identify why the disciplinary action was excessive and/or in violation of existing law or regulation. A remanded disciplinary action may be appealed. A disciplinary action that is remanded for corrective action shall identify that where a suspension is reduced, demotion is reversed, or re-employment after termination occurs, the employee is entitled to receive damages made up of the wages, including benefits, that he or she would have received during a reduced suspension period, the difference between the prior wages and the demotion, less time off, or the difference between the period the employee was reinstated and any period of suspension, if any. An employee that continued to work, or had corrective action as a result of a remand that resulted in a suspension equivalent to that already incurred, shall not be awarded damages. Damages does not include medical bills, insurance costs, or other losses incurred by the employee. An employee that refuses demotion or refuses to work during the period between the final decision, the appeal, and any remand period shall not be awarded damages.

c. *Dismiss*. The Employment Division may dismiss the appeal in all cases where it is determined that the action being appealed is outside of the scope of authority of the Employment Division.

4.05. *Appeal Deadline*. An employee must file an appeal within ten calendar days of receiving a written disciplinary action.